

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANNA A. HALTERMAN : CIVIL ACTION
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TULLYTOWN BOROUGH, et al. : NO. 10-7166

MEMORANDUM

Dalzell, J.

June 14, 2011

Plaintiff Anna A. Halterman ("Halterman") sues defendants Tullytown Borough ("Tullytown") and Police Officer Phillip Kulan ("Officer Kulan") in this suit arising out of Halterman's June 1, 2010 arrest by Officer Kulan at a church fair and her subsequent detention and prosecution for resisting arrest and disorderly conduct. Halterman alleges civil rights violations under 42 U.S.C. § 1983 against both defendants, as well as state law claims for assault, false arrest, abuse of process, malicious prosecution, invasion of privacy and casting in a false light, civil conspiracy, and intentional infliction of emotional distress against Officer Kulan.

Defendants have filed a partial motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), to which Halterman has responded. For the reasons set forth below, we will grant defendants' partial motion to dismiss but will grant Halterman leave to amend so that she may address certain deficiencies we identify in her complaint.

I. Factual Background

In evaluating a motion to dismiss under Rule 12(b)(6), we must "accept all factual allegations in the complaint as true and give the pleader the benefit of all reasonable inferences

that can be fairly drawn therefrom." Ordonez v. Yost, 289 Fed. Appx. 553, 554 (3d Cir. 2008) (quoting Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993)). In deciding such motions, courts may "consider only the allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim," Brown v. Daniels, 128 Fed. Appx. 910, 913 (3d Cir. 2005) (quoting Lum v. Bank of America, 361 F.3d 217, 222 n.3 (3d Cir. 2004)) (internal quotation marks omitted), where such documents are "integral to or explicitly relied upon in the complaint." Id. (quoting In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997)) (emphasis omitted). Because Halterman has attached no exhibits to her complaint, we need only review the facts she alleges therein.

On June 1, 2010, Halterman allegedly attended a fair at the grounds of St. Michael the Archangel Roman Catholic Church in Levittown, Pennsylvania with two friends. Pl.'s Compl. ¶¶ 2-3. At around 11:00 p.m. that evening, Halterman and her friend Leeann Brittian waited in line to ride the "Ring of Fire," an amusement ride at the fair. Id. ¶ 4. Noticing that some of the teenaged fair-goers were garbed in "risque clothing," Halterman said to Brittian, who was standing a few feet away from her, that "[i]f my child ever came out of the house dressed like that, I would slap them in the fucking face." Id. ¶¶ 5-6.

Coincidentally enough, as Halterman made this critique, Officer Kulan, a Tullytown Borough police officer, walked between

her and Brittian. Kulan then allegedly turned around, approached Halterman, and asked, "Can you watch your mouth?" Id. ¶¶ 6-8. Halterman assented, but also asked Kulan why he was "singling [her] out," noting that many others at the fair were using vulgar language. Id. ¶ 9. Officer Kulan asked Halterman to step out of line and Halterman protested, "Why? I didn't do anything." Id. ¶ 10. Kulan asked Halterman to step out of the line again, to which Halterman refused, but when Kulan repeated his request a third time, Halterman finally complied. Id. ¶¶ 11-12. Kulan asked for Halterman's age, which she supplied (twenty years), and her identification, which she asserted was in her friend's car. Id. ¶¶ 13-14. Kulan then twice asked Halterman for her name, and instead of answering the question, Halterman responded "Why?", or "For what?", to which Kulan allegedly replied that he was "the authority." Id. ¶¶ 15-17.

Officer Kulan asked Halterman a third time for her name, and Halterman again declined to answer the question, instead explaining that "she works for the school district and wanted no trouble." Id. ¶ 18. In response, Halterman claims that Kulan grabbed her right arm, twisted it behind her back, and handcuffed her, in the process "hurting her right shoulder, which she had just strained while at ROTC training camp." Id. ¶ 19. Halterman began "crying," "screaming," telling Kulan "to get off her," and "repeatedly ask[ing] why he was arresting her," to which Kulan did not respond. Id. ¶ 20. Kulan called for back-up to assist him. A police officer on a bicycle approached and

Officer Kulan allegedly asked him to see if he could find anyone willing to give a statement. Id. ¶¶ 22-23.

Officer Kulan then took Halterman -- still in handcuffs -- to his patrol car, where they encountered an unidentified white-shirted Tullytown Borough policeman, "appearing to be a higher rank". This policeman allegedly told Halterman to "shut her mouth," instructed Kulan to put her in the patrol car and take her to Bucks County Prison, and informed Halterman that she was "disrespectful" and "[w]e're not going to take this from kids." Id. ¶¶ 24-25. Officer Kulan did not take Halterman to Bucks County Prison, but instead to the Tullytown Borough police station where he placed Halterman in a jail cell in which she languished "for hours." Id. ¶ 26. While in her cell, Halterman was allegedly subjected to a number of indignities: Officer Kulan "interrogated her three (3) times about whether she was 'on drugs', showed her a picture of her he had obtained and confirmed her name and address, took cigarettes from her and threw them out, gave her a breathalyzer test (which she passed) and told her that she 'should know how to talk to authority.'" Id. ¶ 27.

Kulan next took Halterman to be arraigned before a district justice in Levittown. En route to the arraignment, Halterman heard Kulan "speaking on the cell phone, and heard him speak to an unknown person on his cell phone, asking said person to lie on his behalf." Id. ¶ 30. At the arraignment, Kulan filed charges against Halterman for resisting arrest in violation of 18 Pa. Cons. Stat. Ann. § 5104 and disorderly conduct in

violation of § 5503(a)(3)-(4). According to Halterman, the arraigning judge characterized these charges as "nonsense." Id. ¶¶ 31-32. Halterman pled not guilty to the charges and retained a lawyer. Ultimately, a judge of the Bucks County Court of Common Pleas dismissed the charges. Id. ¶ 35.

II. Analysis

Halterman asserts four counts against the defendants: (1) "federal civil rights violations", id. ¶¶ 51-92; (2) "federal civil rights violations" against "defendant Tullytown," id. ¶¶ 93-102; (3) "federal civil rights violations -- demand for punitive and other damages" against Officer Kulan, id. ¶¶ 103-106; and (4) "supplemental state claims" against Kulan, id. ¶¶ 107-111. Defendants correctly note that "the Pennsylvania Supreme Court has expressly stated that punitive damages are not an independent cause of action," Defs.' Mem. in Supp. Partial Mot. Dismiss Compl. ("Defs.' Mem.") at 9, and Halterman "agree[s] to withdraw the separate count claiming punitive damages, since those damages are claimed in the ad damnum clauses of Counts I and IV of the Complaint." Pl.'s Mem. in Opp'n to Def.'s MTD ("Pl.'s Mem.") at 6. We will accordingly dismiss Count III of Halterman's complaint.

As a quick glance at the "counts" listed above reveals, Halterman has not matched her counts with her claims, instead leaving the defendants and the Court to identify the claims advanced in her jumbled pleading. It appears that she has

actually presented nine distinct claims: (1) civil rights violations by Kulan in his individual capacity under 42 U.S.C. § 1983, based on claims of false arrest, malicious prosecution, falsifying police records, use of unnecessary and unreasonable force, and deprivation of access to the courts, Pl.'s Compl. ¶¶ 52, 88; (2) civil rights violations by Tullytown Borough under 42 U.S.C. § 1983 "for deprivation by its agents, servants, workmen and/or employees of their constitutional rights," id. ¶ 94; and state law claims against Kulan in his individual capacity for (3) assault, id. ¶ 108; (4) false arrest, id.; (5) abuse of process, id.; (6) malicious prosecution, id.; (7) invasion of privacy and casting in a false light, id.; (8) intentional infliction of emotional distress; id. and (9) conspiracy "to commit and/or cover up acts." id. ¶ 109. In their partial motion to dismiss, defendants urge the dismissal of (1) Halterman's federal claim against Kulan as to the ground of deprivation of access to the courts as well as her state law claims for (2) invasion of privacy and casting in a false light, (3) conspiracy, and (4) intentional infliction of emotional distress. Defs.' Mot. Summ. J. ("Defs.' MSJ") ¶ 28.

Regarding a motion under Fed. R. Civ. P. 12(b)(6), our Court of Appeals has recently rehearsed that "[t]he test in reviewing a motion to dismiss for failure to state a claim is whether, under any reasonable reading of the pleadings, [the] plaintiff may be entitled to relief," Kundratic v. Thomas, 2011 WL 208636, at *1 (3d Cir. 2011) (brackets in original) (quoting

Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993)), where "the defendant bears the burden of showing that no claim has been presented." Hedges v. U.S., 404 F.3d 744, 750 (3d Cir. 2005). "[A] complaint's 'factual allegations must be enough to raise a right to relief above the speculative level,'" Ideen v. Straub, 385 Fed. Appx. 123, 124 (3d Cir. 2010) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)), and "must not be 'so undeveloped that [the complaint] does not provide a defendant the type of notice of claim which is contemplated by [Fed. R. Civ. P. 8].'" Umland v. PLANCO Fin. Servs., Inc., 542 F.3d 59, 64 (3d Cir. 2008) (quoting Phillips v. Cty. of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008)). Thus, a pleading may not simply offer "labels and conclusions," Twombly, 550 U.S. at 555, and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Moreover, "only a complaint that states a plausible claim for relief survives a motion to dismiss." Id. at 1950. This standard is not as demanding as a "probability requirement," but a plaintiff must allege facts sufficient to show that there is "more than a sheer possibility that a defendant has acted unlawfully." Id. at 1949 (internal quotation marks omitted).

We will first examine defendants' arguments as to the claims in Halterman's complaint that they ask us to dismiss. We will then identify certain other deficiencies in the complaint.

A. Deprivation of Access to the Courts

Defendants contend that "[p]laintiff fails to provide factual averments that the Moving Defendants either prevented her from pursuing a separate cause of action in court or hindered her defense in the underlying criminal proceeding," so that "this claim must be dismissed with prejudice." Defs.' Mem. at 8. Halterman responds that "an individual does have a constitutional right to pursue the defense of her criminal case in a court of law without fear of retaliation or intimidation," Pl.'s Mem. at 8, and that "[t]he Defendant Police officer's prosecution of these false charges (not merely the filing of them) was in retaliation for her attempt to exercise her rights and in retaliation for the perceived lack of respect the police officer received from Plaintiff." Id. at 9. Halterman further explains that she "has also incurred a palpable and actual injury to a property interest, i.e. her hard earned money." Id.

While claims for deprivation of access to the courts are generally brought by plaintiffs seeking to prosecute claims while incarcerated, see, e.g., Burnside v. Moser, 138 Fed. Appx. 414 (3d Cir. 2005); Lewis v. Casey, 518 U.S. 343 (1996), such a cause of action is available to any plaintiff. See, e.g., Olender v. Twp. of Bensalem, 32 F. Supp. 2d 775, 785 (E.D. Pa. 1999) (Brody, J.) ("[T]here is a due process right under the Fourteenth Amendment, which precludes state actors 'from preventing individuals from obtaining access to the civil courts.'") In such cases, a plaintiff must "show that he was

actually injured by the Defendants' alleged interference with his access to the courts," Oliver v. Fauver, 118 F.3d 175, 177 (3d Cir. 1997), and that "the defendant reasonably should have known that the act he intentionally performed would deprive the plaintiff of his right to court access." Johnson v. Miller, 925 F. Supp. 334, 344 (E.D. Pa. 1996) (Pollak, J.).

Applying this test to Halterman's claim, it is evident that she has not alleged any "interference with [her] access to the courts." Oliver, 118 F.3d at 177. While Halterman asserts that Kulan filed false charges against her in retaliation for her coarse language and perceived lack of respect toward him, she makes no allegation that Kulan engaged in further conduct aimed at discouraging her from defending herself in her criminal case or bringing this civil case. In the absence of such retaliation or other interference, Halterman's claim for deprivation of access to the courts must fail. We will accordingly dismiss Count I as to this ground.

B. Invasion of Privacy and Casting in a False Light

Defendants argue that "[p]laintiff baldly asserts that Moving Defendant Kulan invaded her privacy and casted [sic] her in a false light without providing any factual support for this allegation. There is no evidence or any allegations anywhere in the Complaint that there was a widely publicized false statement regarding Plaintiff." Defs.' Mem. at 10. Halterman responds that "[t]he element of publicity has been established where facts

were disclosed to as few as seventeen individuals," Pl.'s Mem. at 12, and that "at least seventeen people . . . were present at the fair, with others present in the courtroom" when Halterman was arraigned. Id. at 13. She further avers that "criminal charges filed in Tullytown municipal courts are published in the police blotters of local newspapers. Again, Plaintiffs [sic] submit that at least seventeen persons read these charges." Id.

As our Court of Appeals has noted, "[a]n action for invasion of privacy is comprised of four distinct torts: (1) intrusion upon seclusion, (2) appropriation of name or likeness, (3) publicity given to private life and (4) publicity placing the person in a false light.'" Kline v. Security Guards, Inc., 386 F.3d 246, 259-60 (3d Cir. 2004) (quoting Harris v. Easton Publ'g Co., 483 A.2d 1377, 1383 (Pa. 1984)). Pennsylvania courts have adopted the definition of the tort of invasion of privacy/false light set out in the Restatement (Second) of Torts, Vogel v. W.T. Grant Co., 327 A.2d 133, 135-36 (Pa. 1974), which provides that

One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Restatement (Second) of Torts § 652E. Thus, a "false light" claim requires an allegation that 'highly offensive false statement was publicized by [the defendant] with knowledge or in

reckless disregard of the falsity.'" Vurimindi v. Fuqua School of Business, 2010 WL 3419568, at *8 n.15 (E.D. Pa. 2010) (quoting Santillo v. Reedel, 634 A.2d 264 (Pa. Super. 1993)).

Without reaching the question of whether Kulan truly gave "publicity to a matter," by arresting Halterman in public and filing criminal charges against her that were ultimately recorded in a police blotter in the local paper, it is apparent that Halterman has simply not alleged, in anything other than conclusory fashion, that Kulan made any false statements about her. While Halterman alleges that Officer Kulan "wrongly accused her of criminal misconduct" and "officially prosecuted the false charges in court," Pl.'s Mem. at 12, she identifies no false statements Kulan made either during her arrest or during the later proceedings against her. As for the charges filed against her, we simply cannot construe such charges to be "factual statements". While such charges may be supported by factual statements, by themselves they merely constitute propositions regarding liability to be tested in a court. Just as Halterman's causes of action against Kulan are not factual statements -- such that Halterman will not be liable for invasion of privacy and casting in a false light merely because we dismiss one of her claims -- so the charges filed against her do not, by themselves, give rise to a claim for invasion of privacy.

Because Halterman offers no "factual allegations . . . [that] raise a right to relief above the speculative level," Ideen, 385 Fed. Appx. at 124, in support of her invasion of

privacy/false light claim, we will dismiss Count IV of her complaint insofar as it rests on this state law claim.

C. Conspiracy

With regard to Halterman's conspiracy claim, defendants assert that "[t]here is no allegation of an agreement between Moving Defendant Kulan and the unidentified Tullytown Borough police officer(s) to commit any unlawful acts against Plaintiff." Defs.' Mem. at 11. Halterman counters that

The very fact that Defendant KULAN was on the phone asking another to lie to back him up is allegation enough to show conspiracy, especially since Plaintiff will testify that, from what she could discern from hearing one end of the conversation, it sounded like the person on the other end of the call agreed to lie to back Defendant KULON [sic], and that Plaintiff was mentioned in the same phone conversation.

Pl.'s Mem. at 13. Halterman further submits that "if the Court should decide further detail in pleading is necessary, then Plaintiff requests an opportunity to amend the Complaint." Id.

As Judge Baylson has explained, "[t]o prove a civil conspiracy under Pennsylvania law, a plaintiff must show the following elements: (1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage." Doltz v. Harris & Assocs., 280 F. Supp. 2d 377, 389 (E.D. Pa. 2003). Defendants correctly note that Halterman's complaint alleges no facts supporting the existence of an

understanding between Kulan and another "to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose," id. The complaint merely alleges that Halterman heard Kulan "speak to an unknown person on his cell phone, asking said person to lie on his behalf," Pl.'s Compl. ¶ 30, not that any agreement was reached. Halterman attempts to aver additional facts in her response to defendants' motion to dismiss and seeks leave to amend the complaint to include such facts, but it is hard to imagine more threadbare factual allegations. Essentially, Halterman alleges that from what she could hear of Kulan's conversation it sounded like an agreement was reached -- but she offers no specific details supporting this conclusion. Without these details, Halterman has done little more than assert "it sounded like" an element of her claim was met, which is tantamount to merely asserting that the element was met. Although it seems pointless to permit Halterman to amend her complaint to include such an effectively conclusory allegation, given the early stages of this matter, we will afford her another bite at what seems a bad apple.¹

¹ It bears noting that Halterman has not alleged that anyone took any overt act in furtherance of an agreement to lie on Kulan's behalf. As we have already noted, Halterman has not even identified any false statements that Kulan made; she has certainly pointed to no such statements made by anyone else in the course of her arrest or prosecution. Because Halterman has failed to present a factual basis supporting two of the requisite elements of a civil conspiracy claim, absent more flesh on this bone Count IV of her complaint will be dismissed to the extent it advances such a claim.

D. Intentional Infliction of Emotional Distress

Defendants argue that "[p]laintiff's claim for intentional infliction of emotional distress is devoid of any factual allegations sufficient to constitute extreme and outrageous conduct." Defs.' Mem. at 13. Halterman disagrees, recounting "that she was exercising her First Amendment right of free speech when Defendant KULON [sic] arrested her without legal basis, falsified police records, intentionally exaggerated and trumped up said charges, acted maliciously and without probable cause, and did so motivated by the desire to punish Plaintiff for exercising her rights," Pl.'s Mem. at 14-15, and contending that "[i]t cannot seriously stated [sic] that such conduct, if proven is not extreme and outrageous." Id. at 15.

As our Court of Appeals has explained, a claim for intentional infliction of emotional distress ("IIED") in Pennsylvania has four elements: "(1) the conduct must be extreme and outrageous; (2) the conduct must be intentional or reckless; (3) it must cause emotional distress; and (4) the distress must be severe." Chuy v. Philadelphia Eagles Football Club, 595 F.2d 1265, 1273 (3d Cir. 1979). To recover for IIED, a plaintiff must show that the defendant's conduct was "'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society.'" Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988) (quoting Buczek v. First

National Bank of Mifflintown, 531 A.2d 1122, 1125 (Pa. Super. 1987)).

Although Officer Kulan's alleged conduct was boorish and unprofessional, we cannot say it was "beyond all possible bounds of decency." Id. Outrageousness occurs in Pennsylvania jurisprudence only where "the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" Hunger v. Grand Cent. Sanitation, 670 A.2d 173, 177 (Pa. Super. 1996). Average members of our community would not so exclaim upon learning that Halterman used vulgarity in public, repeatedly declined to follow a police officer's instructions, and was consequently arrested, detained, and charged with minor offenses -- as Halterman readily admits.

IIED in Pennsylvania is a tort reserved for the most extreme ranges of behavior. In Chuy, for example, our Court of Appeals affirmed an entry of judgment in favor of a plaintiff where the defendant's team physician had falsely informed the media (and thus, the plaintiff) that the plaintiff suffered from a fatal disease, leading to plaintiff's panic and despondency. 595 F.2d at 1269. See also Papieves v. Lawrence, 263 A.2d 118 (Pa. 1970) (overruling dismissal of complaint on demurrer where complaint alleged that defendant's automobile struck and killed plaintiffs' son and the defendant, without notifying plaintiffs, then hid the body and later buried it in a makeshift grave). The conduct that Halterman alleges on Officer Kulan's part simply

does not approach this level of outrageousness. We will thus dismiss Count IV with respect to Halterman's IIED claim.

E. Tullytown Borough's Municipal Liability

Having largely granted defendants' partial motion to dismiss, we now turn to deficiencies in Halterman's complaint that have become apparent to us but were not identified in defendants' motion.

Halterman asserts in Count II of her complaint against Tullytown Borough "deprivation by its agents, servants, workmen and/or employees of their constitutional rights within the meaning of 42 U.S.C. § 1983." Pl.'s Compl. ¶ 94. Halterman predicates this assertion of liability on the claims that (1) Officer Kulan, as an agent of Tullytown, violated her constitutional rights, id. ¶ 95; (2) Tullytown failed to train its officers "in the proper methods for dealing constitutionally with members of the public and non-perpetrator citizens," id. ¶ 96; (3) Tullytown's agents "have a history of threatening, assaulting, falsely accusing and prosecuting and physically using unreasonable physical force on innocent citizens," id. ¶ 97; (4) Tullytown "permitted, tolerated and overlooked and/or approved the constitutional violations of citizens by officers of its police department," id. ¶ 99; and (5) Tullytown has "encouraged, tolerated, ratified, and has been deliberately indifferent to the . . . patterns, practices and customs" of illegal behavior by its agents. Id. ¶ 102.

Under Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978), "a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Our Court of Appeals has summarized the jurisprudence on this point:

A government policy or custom can be established in two ways. Policy is made when a decisionmaker possessing final authority to establish municipal policy with respect to the action issues an official proclamation, policy, or edict. A course of conduct is considered to be a custom when, though not authorized by law, such practices of state officials are so permanent and well settled as to virtually constitute law.

Andrews v. City of Phila., 895 F.2d 1469, 1480 (3d Cir. 1990) (brackets and internal quotation marks omitted). It is not enough "for a § 1983 plaintiff merely to identify conduct properly attributable to the municipality. The plaintiff must also demonstrate that, through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged." Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown, 520 U.S. 397, 404 (1997) (emphasis in original). Where "the policy in question concerns a failure to train or supervise municipal employees, liability under section 1983 requires a showing that the failure amounts to 'deliberate indifference' to the rights of persons with whom those employees will come into contact." Carter v.

City of Phila., 181 F.3d 339, 357 (3d Cir. 1999). And as the Supreme Court recently emphasized, "[a] municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." Connick v. Thompson, 131 S. Ct. 1350, 1359 (2011).

Since respondeat superior liability may not be the basis for a § 1983 claim against a municipality, the first ground that Halterman asserts as the basis for her claim against Tullytown -- that Officer Kulan violated her constitutional rights -- is inadequate, and we thus need not further consider it. But Halterman's other grounds come closer to satisfying Monell since they each allege a policy of (1) failing to train Tullytown employees in constitutional methods of dealing with citizens, or (2) failing to supervise such employees and discipline them when they commit constitutional violations.

If these other grounds come closer to establishing Monell liability, however, they still fall short. All of Halterman's allegations as to Tullytown policy are conclusory. Halterman's claims as to Tullytown's failure to train or supervise its employees include no factual details as to Tullytown's training programs, the history of cognate violations allegedly committed by its employees, or Tullytown's supposed failure to respond to these violations with discipline. Halterman thus fails to provide "enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element." Phillips, 515 F.3d at 234 (internal

quotation marks omitted). Instead, it appears that Halterman has merely imagined what types of training deficiencies or failures to discipline might support municipal liability in the present case and then asserted that these deficiencies and failures indeed exist. She thus on the complaint as drafted fails to state a cause of action against Tullytown as a municipality for violation of § 1983.

It has not escaped our attention that defendants did not raise Halterman's failure to state a claim against Tullytown in their partial motion to dismiss. "Sua sponte dismissal of a claim is disfavored and inappropriate unless the basis for dismissal is apparent from the face of the complaint," Giles v. Volvo Trucks N. Am., 551 F. Supp. 2d 359, 369 (M.D. Pa. 2008) (Kane, C.J.) (citing Ray v. Kertes, 285 F.3d 287, 297 (3d Cir. 2002)), and "[b]efore sua sponte dismissal is appropriate . . . a Court must give a plaintiff notice and an opportunity to be heard on the legal viability of his complaint." Id. (citing Dougherty v. Harper's Magazine Co., 537 F.2d 758, 761 (3d Cir. 1976)). We will thus give Halterman ten days to provide specific factual allegations supporting her allegations of municipal liability against Tullytown under § 1983.

BY THE COURT:

___\s\Stewart Dalzell

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANNA A. HALTERMAN	:	CIVIL ACTION
	:	
v.	:	
	:	
TULLYTOWN BOROUGH, et al.	:	NO. 10-7166

ORDER

AND NOW, this 14th day of June, 2011, upon consideration of plaintiff's complaint (docket entry # 1), defendants' partial motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (docket entry # 6), and plaintiff's response in opposition thereto (docket entry # 7), and in accordance with the accompanying Memorandum, it is hereby ORDERED that:

1. Defendants' partial motion to dismiss (docket entry # 6) is GRANTED;

2. Count I of plaintiff's complaint is DISMISSED as to the ground of deprivation of access to the courts;

3. Count III of plaintiff's complaint is DISMISSED;

4. Count IV of plaintiff's complaint is DISMISSED as to the grounds of invasion of privacy, casting in a false light, and intentional infliction of emotional distress; and

5. By June 24, 2011, plaintiff shall FILE an amended complaint that responds to the Court's discussion of her Monell claim under Count II against Tullytown Borough and her claim of civil conspiracy against Officer Kulan, if she can do so conformably with Fed. R. Civ. P. 11(b).

BY THE COURT:

___\s\Stewart Dalzell